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[12131/1]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:
BRANDER et al.

For: ENHANCED MATCHING APPARATUS AND METHOD FOR POST-TRADE PROCESSING AND SETTLEMENT OF SECURITIES TRANSACTIONS

Filed: November 21, 1997

Serial No.: 08/976,159

Examiner: R. Jeanty

Art Unit: 3623

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

Date 22 DEC 2006 Atty's Reg. # 36,098

Atty's Signature

MICHELLE CARNIAUX
KENYON & KENYON LLP

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

SIR:

Please find a Reply Brief Under 37 C.F.R. § 41.41 transmitted herewith for filing in the above-identified patent application.

No fee is believed to be required. However, if any fee is required, please use Deposit Account No. **11-0600**. A duplicate copy of this transmittal letter is enclosed for that purpose.

Respectfully submitted,

KENYON & KENYON LLP

Dated: 22 Dec 2006

By: _____
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Michelle Carniaux (Reg. No. 36,098)

REPLY BRIEF UNDER 37 C.F.R. § 41.41

SIR:

Appellants submit the present Reply Brief in response to the Examiner's Answer dated October 25, 2006.

For the reasons set forth in the Supplemental Appeal Brief and those set forth below, it is again respectfully submitted that the final rejections of claims 1 to 9, and 12 to 36 should be reversed.

Claims 10 and 11 have been canceled. Claims 1 to 9, and 12 to 36 have been finally rejected.

Appellants incorporate herein arguments previously presented in the Supplemental Appeal Brief mailed on November 19, 2002 and in the Appeal Brief mailed on May 8, 2002. In addition, the following comments are presented to further highlight the differences between the claimed subject matter and the applied prior art references.

Claims 1 to 9, 12 to 13, and 21 to 36 stand rejected under 35 U.S.C. § 103(a) as unpatentable over The Depository Trust Company filing, in view of the Hawkins patent

("Issue A"). Claims 14 to 17 and 19 to 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over The Depository Trust Company filing in view of the Lupien patent ("Issue B"). Claim 18 stands rejected under 35 U.S.C. § 103(a) as unpatentable over The Depository Trust Company filing in view of the Lupien patent and the Hawkins patent ("Issue C").

As an initial matter, it is noted that in the Examiner's Answer dated October 25, 2006, the Examiner incorrectly states the status of claims 14 to 17, 19, and 20 as having been rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of The Depository Trust Company filing and the Hawkins patent. Instead, claims 14 to 17, 19 and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of The Depository Trust Company filing in view of the Lupien patent.

As regards the claims of Issue A, Group I (claims 1 to 8, 21, 29, 30, 33, and 34), these claims recite a processing computer that receives a notice of order execution information ("NOE"), receives a communication from an institution containing institution allocation information ("II"), and matches the NOE and the II. Not only does the computer match these communication, but also generates a trade confirmation (based on information in both communications, and from a standing instructions database). As set forth in the Supplemental Appeal Brief, The Depository Trust Company filing describes matching **trade data** with Institution Instructions. This trade data is not NOE information. In particular, the trade data referred to therein is trade settlement instructions which are input after trade execution and during the trade settlement process. *See*, The Depository Trust Company filing, page 20 of 72, lines 5 to 6; *see also* page 19 of 72, last paragraph. An NOE, on the other hand, communicates the details of the execution; *i.e.*, it is used by brokers to report trades that cannot be yet confirmed.

In the Examiner's Answer, it is asserted that The Depository Trust Company filing, at page 3 of 72, paragraph 2, identifies "trade data" as including an NOE, and that The Depository Trust Company filing therefore discloses the matching of the NOE and the II when it describes, at page 4 of 72, lines 14 to 16, matching of trade data with Institution Instructions. However, any review of The Depository Trust Company filing makes plain that, contrary to the Examiner's assertion, the trade data of The Depository Trust Company filing does not refer to data that includes the NOE.

In particular, referring to page 3 of 72, of The Depository Trust Company filing, which is the section referred to by the Examiner to support the Examiner's incorrect assertion, this section clearly associates entering of the trade data for preparation of ***the confirmation***, not the NOE. In this regard, The Depository Trust Company filing at page 3, lines 9 to 13 states "***[w]hen entering trade data*** . . . a broker-dealer can simply refer to the account designations . . . and the ID system will automatically add the necessary associated detail . . . ***to the confirmation***." The "trade data" is referred to as the antecedent for "***the confirmation***," not for an NOE.

Furthermore, The Depository Trust Company filing, at page 3 of 72, lines 22 to 26, states that Institution Instructions, which are needed for entering of trade data, can be sent ***subsequent to acceptance of the NOE***, which clearly indicates that the trade data does not include the NOE, but is rather entered subsequent to acceptance of the NOE.

Thus, as set for the above, while The Depository Trust Company filing may refer to matching of ***trade data*** with Institution Instructions, nowhere does the The Depository Trust Company filing disclose or suggest matching of an ***NOE*** and II.

Respectfully, the Hawkins patent also does not describe the matching feature of the claims.

Furthermore, as set forth in the Supplemental Appeal Brief, the combination of The Depository Trust Company filing and the Hawkins patent does not disclose or suggest a standing instructions database as recited in the claims of Group I.

In the Examiner's answer, the Examiner erroneously asserts that stored information, referred to in The Depository Trust Company filing at page 3 of 72, discloses the standing instructions database. However, the information referred to in the cited section is detailed account and party ***identification*** information, such as customer name and account numbers. Nowhere does The Depository Trust Company filing state that the information includes settlement instructions, or instructions of any kind. To the contrary, with respect to entry of instructions, The Depository Trust Company filing indicates only that it is required for the broker to enter trade data to author a confirmation, *i.e.*, including settlement instructions, and that the other detail, not the instructions, is obtained from a location at which it is stored. The information therefore does not disclose or suggest a standing ***instructions*** database.

Respectfully, the Hawkins patent also does not describe the standing instructions database feature of the claims.

The claims of Issue A, Groups II (claims 9, 12, 22 to 28, 35, and 36) and IV (claims 31 and 32) are also directed to matching the NOE and an II. As discussed above, neither The Depository Trust Company filing nor the Hawkins patent describes this feature.

Furthermore, the claims of Issue A, Group IV (claims 31 and 32) are also directed to a standing instructions database. As discussed above, neither The Depository Trust Company filing nor the Hawkins patent describes this feature.

The claim of Issue A, Group III (claim 13) recites specific fields of the NOE. As discussed above, The Depository Trust Company filing and the Hawkins patent do not describe matching an NOE and an II; accordingly, the features of the claim of Issue A, Group III are also not described.

As to Issue B, the Examiner has attempted to combine The Depository Trust Company filing with the Lupien patent. As discussed in Appellants previously filed papers, The Depository Trust Company filing relates to ***trade settlement***, while the Lupien patent

relates to matching ***buy and sell order***, and there is therefore no suggestion in the prior art to combine these references in the manner suggested by the Examiner.

In the Examiner's Answer, the Examiner does not address Appellants' argument that The Depository Trust Company filing and the Lupien patent relate to different types of processes at different stages of the trade, and that therefore one skilled in the art seeking to improve the system described in The Depository Trust Company filing would not look to the Lupien patent. Instead, the Examiner, apparently relying on an improper hindsight reconstruction based on Appellants' disclosure, simply asserts that a reason to combine the references would be that one may thereby obtain an enhanced system. Indeed, there is no suggestion in the prior art to combine these references in the manner suggested by the Examiner.

In any event, as set forth above, The Depository Trust Company filing does not disclose or suggest matching an NOE and an II, or a standing instructions database as recited in the claims (claims 14 to 17, 19, and 20), and the Lupien patent does not cure this deficiency.

As to Issue C, the Examiner attempts to combine The Depository Trust Company filing with the Lupien patent, and also the Hawkins patent. As discussed above, there is no suggestion in the prior art to combine at least these three references in the manner suggested by the Examiner. Moreover, as set forth above, none of these references describes automatically matching an NOE and an II, or a standing instructions database, as recited in claim 18.

For at least the reasons indicated above, Appellants respectfully submit that the art of record does not teach or suggest Appellants' invention as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the inventions recited in the claims of the present application are new, non-obvious, and useful.

For the foregoing reasons and for the reasons more fully set forth in the Appeal Brief and the Supplemental Appeal Brief, it is respectfully submitted that the final rejections of the pending claims should be reversed.

Respectfully submitted,

Dated: 22 Dec, 2006 By: _____

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